In the High Court of Judicature for Rajasthan
Jaipur Bench

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Cr. Misc. Petition No.177/2000
Mittan Lal ***Versus*** State.

Date of Order ::: 18/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Manu Bhargava, for petitioner
Mr. Arun Sharma, Public Prosecutor for State.

Petitioner has preferred instant peititon U/s 482 CrPC for quashing proceedings initiated against him for offence U/s 7/16 of Prevention of Food Adulteration Act, 1954 ("**the Act**") in Cr.Case No.19/97 pending before Chief Judl. Mag. Alwar.

On 29/06/88, Food Inspector checked shop of petitioner carrying on business of grocery items including edible & vegetable oil besides sugar under a food license dt.03/11/83 and took sample of mustard oil weighing 375 gms, which was divided into three equal weight and sealed in three cleans bottles – out of which one was sent on 30/06/88 to Public Analyst, Alwar who opined in his report dt.08/07/88, found sample of mustard oil to be adulterated on analysis whereof as it does not conform to prescribed standards of purity under PFA Act & Rules, 1955 – on the basis

whereof, a complaint was filed before Chief Judl. Magistrate, Alwar on 29/07/89 – on which summons were issued on 11/08/89 – in pursuance whereof petitioner appeared on 27/03/90 and submitted bail bonds and case was fixed for -pre-charge evidence on 22/05/90. However, on 28/06/90, petitioner filed application U/s 13(2) of the PFA Act for sending referee sample to Central Food Laboratory for re-analysis and before it could be decided, application was moved by prosecution to place certain documents in evidence on record, to which no objection was raised by petitioner.

After seven years, vide order dt. 16/08/97 learned trial Magistrate granted permission to send referee sample for re-analyst and called upon accused to deposit requisite fee. After deposit of requisite fee, sample of mustard oil was sent to Food Technological Research Institute, Mysore - in its report dt.16/01/98 it was opined that sample was not fit for analysis for the reasons ad infra:

> "The contents of the sample bottle was viscous and emitted rancid smell due to long storage (9 years date of collection as indicated on the sample bottle: 29/06/1988) of sample after it was collected. Thus

rendering the sample unfit for tests or analysis for the standards laid down for Mustard Oil under the PFA Act and Rules thereof.

Against which, application was filed by petitioner claiming that since his right for re-analysis of sample by Central Food Laboratory has been seriously prejudiced, proceedings be dropped but the same was dismissed by learned trial Magistrate on 12/02/99 holding third sample can be again sent for -re-analysis.

However, on 26/02/99, charge was read over to the petitioner, to which he denied and pleaded not guilty and claimed trial. No evidence was recorded on subsequent dates and since Presiding Officer was transferred, order was passed for denovo trial and treating it to be warrant trial, summons were again issued to the prosecution evidence. From order sheets, it appears that no progress in trial could have taken place for one or the other reason but the delay at no point of time can be attributable to petitioner (accused). Hence the petitioner has approached this Court to invoke powers U/s 482, CrPC. On 20/09/2000, the record was called by this Court.

Contention advanced by Counsel for the

petitioner is that criminal case launched for prosecution of petitioner has been lingering on for one or the other reason since 25/07/89 when complaint was filed by Food Inspector for the sample taken on 29/06/88 and despite (12) years having rolled by till instant petition was filed on 27/03/2000, no effective proceedings have taken place before the court below where prosecution has not taken sincere efforts to produce its evidence in summary trial and even in course of denovo warrant trial, during which petitioner has co-operated by putting his appearance whenever required and thus in summary or warrant cases, trial has not been concluded by efflux of (12) years period, which has resulted in infringement of his right of speedy trial as guaranteed under Art.21 of Constitution of India; and that apart, after report was received from Central Food Laboratory, Mysore, holding that re-analysis of sample of mustard oil is unfit for tests, his statutory right U/s 13(2) of PFA Act to get sample re-tested has been infringed; therefore, no purpose will be served to continue criminal proceedings, in such circumstances (supra) the same deserve to be set aside. In support, Counsel placed reliance on the judgments

of this Court in **Anil Kumar Vs. State (1997 CrLR (Raj.)699); Gokul Das Vs. State (1998 CrLR(Raj) 718); Kewal Chand Vs. State (1999 CrLR(Raj) 114) and Heeraram Sirvi Vs. State (1999 CrLR (Raj) 265).**

Public Prosecutor opposed this petition and submits that delay alone cannot be considered for quashing criminal proceedings and the effect of report submitted by Central Laboratory can be considered at the stage of trial keeping in view allegation against petitioner in criminal case being of serious nature for offence under PFA Act; and if this Court considers it proper, the trial court be directed to complete trial expeditiously.

I have considered rival contentions of both the parties and with assistance examined material on record. In **Anil Kumar Vs. State** (supra) this Court has taken note of a series of decisions wherein criminal proceedings in the facts of given case have been quashed on the ground of delay in trial. In **Heera Ram Sirvi Vs. State** (supra), this Court observed ad infra:

> **"4.** It is the duty of the trial Court and all the more of prosecution to expeditiously conclude the trial. The

> right of the accused for expeditious trial has been now treated as a fundamental right and if the delay is occasioned without his fault and particularly due to the lapse on the part of the prosecution, it is an infringement of his such fundamental right. In this case barring few dates on which adjournments were made due to some unavoidable reasons, mostly the delay has resulted due to the fault of prosecution for not producing or getting served its witnesses. In these circumstances, I am inclined to agree with the learned counsel or the petitioner that allowing to continue these proceedings even after 14 years would amount to abuse of the process of law and injustice to the petitioner, who has already suffered mental and physical strain by regularly attending the courts for last 14 years and obviously also financial loss."

From narration of facts borne out from various orders passed by trial Court in course of trial in instant case, it is clear that in course of summary as well as even in denovo warrant trial proceedings, prosecution has completely failed to take effective steps to get its evidence recorded with all promptitude despite twelve years have been rolled by. Be that as it may, proceedings

have lingered on for one or the other reason and could not be concluded. The record also does not show that pendente proceedings there has been delay attributable to petitioner; while it appears on record that he has been regularly putting his appearance and was co-operating in course of trial.

It is the duty of Court to issue process for procuring attendance of witnesses and also to take further necessary steps to ensure their attendance inasmuch as simultaneously it may not absolve the prosecution as well from making efforts to ensure that witnesses are served through summons issued by Court and the prosecution alone has to assist the Court to expedite the trial. In the facts of instant case, this Court is of the opinion that the petitioner who regularly attending the court for almost more than (12) years if still is allowed to be prosecuted any further at no fault on his part, will be nothing but a clear abuse of process of court and such proceedings pending for inordinate delay deserves to be quashed and set aside. That apart, when report of Central Food Laboratory has also expressed that contents of the sample bottle was viscous and emitted rancid smell due to long

storage (9 years date of collection as indicated on the sample bottle: 29/06/1988) which rendered the sample unfit for tests or analysis for the standards laid down for Mustard Oil under the PFA Act and Rules thereof, statutory right of petitioner has been infringed to get sample re-tested by Central Laboratory which alone could be the conclusive proof - in this view whereof, if criminal proceedings are allowed to continue against petitioner will be nothing but an abuse of process of law.

Consequently, misc. petitions succeeds and and is hereby allowed alongwith stay petition No.98/2000. Proceedings against petitioner for offence U/s 7/16 of PFA Act, in Cr.Case No.19/97 (Old-186/89) pending before CJM, Alwar are hereby quashed and set aside. Bail Bonds furnished by petitioner stands discharged. Record be sent back forthwith to the trial court.

(Ajay Rastogi), J.

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